

KAREN SPEARS,	:	Order Docketing, Dismissing, and
Appellant	:	Referring Appeal to the Assistant
	:	Secretary - Indian Affairs
v.	:	
	:	
	:	Docket No. IBIA 96-12-A
ACTING SACRAMENTO AREA DIRECTOR,	:	
BUREAU OF INDIAN AFFAIRS,	:	
Appellee	:	November 28, 1995

On October 23, 1995, the Board of Indian Appeals received a notice of appeal from Karen Spears, through counsel, Jay B. Petersen, Esq., Oakland, California. Appellant seeks review of a September 22, 1995, decision of the Acting Sacramento Area Director, Bureau of Indian Affairs, declining to certify appellant as eligible for payment of attorney fees under the Indian Child Welfare Act.

Appellant appealed to the Board pursuant to instructions given in the Area Director's decision. However, as the Board stated in Spears v. Sacramento Area Director, 27 IBIA 93 (1994), and Spears v. Sacramento Area Director, 28 IBIA 161 (1995), appeals from decisions denying certification of eligibility for payment of attorney fees under 25 CFR 23.13(b) are appealable to the Assistant Secretary - Indian Affairs rather than this Board.

The Board dismissed appellant's previous appeal for lack of jurisdiction and referred it to the Assistant Secretary. However, the Assistant Secretary, citing "a tremendous backlog of work," referred the matter back to the Board under 43 CFR 4.330(a)(2). In light of the possibility that the Assistant Secretary might wish to refer this appeal to the Board as well, and in order to avoid the possibly unnecessary transfer of original documents, the Board did not immediately dismiss this appeal but requested the Assistant Secretary to inform the Board by November 15, 1995, if she wished to refer this appeal to the Board under 43 CFR 4.330(a)(2). Absent such a referral, the Board stated, the appeal would be dismissed and transferred to her.

The Board has not heard from the Assistant Secretary. Therefore, pursuant to the authority delegated to the Board of Indian Appeals by the Secretary of the Interior, 43 CFR 4.1, this appeal is docketed, dismissed, and transferred to the Assistant Secretary Indian Affairs.

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Anita Vogt  
Administrative Judge

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Kathryn A. Lynn  
Chief Administrative Judge